



MDE to Modify Industrial Stormwater General Permit Covering POTWs August 2018

On June 22, 2018, MDE published a Notice of Tentative Determination and Public Hearing to modify the General Permit for Discharges of Stormwater Associated with Industrial Activity (currently, Permit No. 12-SW) to allow permittees to use the newly finalized trading regulations for compliance purposes. Certain POTWs must have stormwater permit coverage either under 12-SW or through an individual permit if they have point source discharges of stormwater. Under federal and state law, a POTW that has a design flow of 1.0 mgd or more or that is required to have a Part 403 pretreatment program is considered a Sector T (Treatment Works) industrial discharger.

MDE originally issued 12-SW effective January 1, 2014. As a part of the permit, MDE required that certain facilities comply with Chesapeake Bay Restoration requirements. If a regulated facility met all of the criteria below, it had five years from the permit effective date (or until December 31, 2018) if it was covered under the previous permit, 02-SW, or four years for the filing of a Notice of Intent (NOI) to be covered for a new permittee to restore 20% of the untreated impervious surface area at the facility:

- Criteria #1 – Facility is located within the Chesapeake Bay Watershed
- Criteria #2 – Facility is 5 acres or greater in size
- Criteria #3 – Any portion of the facility is located in a Phase I or II MS4 jurisdiction,
and
- Criteria #4 – Facility is not owned or leased from a permitted MS4

MDE's Permit Modification Fact Sheet accompanying the Tentative Determination gives additional insight on how successful 12-SW permittees have been at meeting the restoration requirements in the current permit. According to MDE, there are 1,006 permittees covered by 12-SW; 299, or approximately 29%, are subject to the restoration requirement. Of the 299 permittees subject to the 20% provision, 87% need less than 3 acres of restoration to comply. Twenty-two percent have met the requirement to date. In addition, MDE notes that largest facilities—those with over 5 acres to restore—“are responsible for nearly 60% of the restoration efforts benefiting the Bay.” MDE concludes that a small number of permittees are carrying “a large percentage of the burden and cost...” and “[t]his wasn't envisioned by MDE when the permit was written.”

In response, MDE is proposing to modify the permit to allow three things: (1) use of the final trading regulations to comply with the restoration requirement; (2) use of the final



trading regulations to generate marketable credits subject to certification, verification, and reporting requirements, even at facilities smaller than 5 acres; and (3) an extension of the restoration compliance date from December, 31, 2018 to December 31, 2020 (for “old” permittees covered by 02-SW) or four years from the NOI date (for “new” permittees). Facilities that have not completed restoration by December 31, 2018 can choose to either submit a Stormwater Pollution Prevention Plan (SWPPP) with a Nutrient Reduction Progress Report Form each December 31 until restoration work is completed, or achieve the reductions by using trading. MDE also removed the requirement that all work must be done at the facility unless “infeasible.”